

**TESTIMONY OF THE HON. JOHN SINCLAIR, PRESIDENT
ON BEHALF OF
THE LITTLE SHELL TRIBE OF CHIPPEWA
INDIANS OF MONTANA**

**SENATE COMMITTEE ON INDIAN AFFAIRS
HEARING ON S. 546
THE LITTLE SHELL TRIBE OF CHIPPEWA INDIANS RESTORATION
ACT OF 2011**

April 14, 2011

Chairman Akaka, Vice Chairman Barrasso, our friends Senator Tester and Senator Baucus, and honorable members of this Committee on Indian Affairs, on behalf of the Little Shell Tribe of Montana, I thank you for the opportunity to testify in support of legislation that would confirm the federal relationship between the Little Shell Tribe of Chippewa Indians of Montana and the United States.

My name is John Sinclair and I have the honor of serving as President of the Little Shell Tribe. Before me, my father and my grandfather also served our Tribe working to realize our people's federal recognition. The Little Shell Tribe is organized under our 1977 Constitution. Our government consists of an elected Tribal Council (two year term) and Executive Board (four year term) and our tribal enrollment encompasses about 4,500 members. As a landless tribe my people are largely settled on the fringes of rural towns in Montana on the Front Range and along the Highline, as well as in the cities of Great Falls and Helena.

The Little Shell Restoration Act of 2011 (S. 546) cosponsored by Senator Tester and Senator Baucus would finally end our long struggle for federal recognition, for which so many of my people have fought tirelessly over the past century. The Restoration Act is consistent with Congress' and the Department of the Interior's historical commitments to acknowledge our people and establish a land base for us. The need for congressional action has become absolutely necessary since the Department abandoned its July 24, 2000 proposed positive finding that the Tribe had met all the seven mandatory criteria of the Part 83 regulations and should be recognized. On October 27, 2009 the Department reversed this decision and found that the Tribe had not met the burden of proving all the regulatory criteria of recognition. I am here before you today, as I have been a number of times in the past, to urge that you exercise your plenary authority over Indian tribes and recognize the United States' political relationship with the Little Shell Tribe of Chippewa Indians. We are Indians, we are a Tribe, and all we desire is the same recognition that you offer our sister tribes.

LITTLE SHELL OF CHIPPEWA INDIANS RESTORATION ACT OF 2011, S. 546

The proposed Little Shell Tribe of Chippewa Indians Restoration Act of 2011 would afford my people the federal recognition that has long been promised to us. S. 546 provides that we will be a duly recognized tribe just like our sister tribes in Montana and across the United States. The Act instructs the Secretary of the Interior to acquire 200 acres in trust so that we can finally have a tribal land base. It also explicitly states that we are eligible to acquire additional lands under section 5 of the Indian Reorganization Act, an important provision given the 2009 Supreme Court decision in *Carvieri v. Salazar*. The Act would also right the wrong that was inflicted against us by the Department's flawed decision not to recognize our Tribe based on the imperfect process established under the Part 83 regulations.

PREVIOUS CONGRESSIONAL EFFORTS TO CONFIRM THE FEDERAL STATUS OF THE LITTLE SHELL TRIBE

Congress has been aware of the Little Shell Tribe's dilemma for years and several times has voiced its desire to legislate a solution for us. In 1934 Congress enacted the Indian Reorganization Act (IRA), which provided a mechanism for groups of Indians like ours to organize and apply for land. In December 1935, the Commissioner of Indian Affairs took steps to organize our people under the IRA. The Commissioner proposed a form to enroll our people, stating:

It is very important that the enrollment of homeless Indians in the State of Montana be instituted immediately, and it is proposed to use this form in the determination of Indians who are entitled to the benefits of the Indian Reorganization Act.

BIA Letter, December 23, 1935. This effort resulted in the Roe Cloud Roll, named after Dr. Henry Roe Cloud, an Interior official who played a large part in the project. Once the roll was complete, the Field Administrator clearly stated that the purpose of the roll was to settle our people and bring them under active federal supervision:

The landless Indians whom we are proposing to enroll and settle on newly purchased land belong to this same stock, and their history in recent years is but a continuation of the history of wandering and starvation which formerly the Rocky Boy's band had endured.

Out of the land purchase funds authorized by the Indian Reorganization Act, we are now purchasing about 34,000 acres for the settlement of these Indians and also to provide irrigated hay land for the Indians now enrolled on Rocky Boy's Reservation. The new land, if devoted wholly to that purpose, would take care of only a fraction of the homeless Indians, but it is our intention to continue this program through the years until something like adequate subsistence is provided for those who cannot provide for themselves. The first step in the programs is to recognize those Indians of the group who may rightfully make claim of being one-half degree, which is the occasion for presenting the attached applications. ***The fact of these people being Indian and being entitled to the benefits intended by Congress has not been questioned.***

Roe Cloud Roll applications, 1937 (emphasis added). Even though the appropriation of funds for the Little Shell people was clear acknowledgment of our status as a tribe, one desperately in need of the federal protection extended to other tribes, the Department of the Interior was never able to fulfill this promise. The limited resources available to acquire land were expended for tribes already recognized.

In 1940, Senator James Murray formally requested that the Department fulfill the federal government's promise to acquire land for the Little Shell Band. Assistant Commissioner Zimmerman responded that his office was "keenly aware of the pressing need of the landless Chippewa Cree Indians of Montana. The problem thus far has been dealt with only in a very small way. I sincerely hope that additional funds will be provided for future purchases in order that the larger problem remaining can be dealt with in a more adequate manner." Unfortunately, despite the efforts of Congress the funds were never appropriated and the problem was never dealt with in anything resembling an adequate manner.

FINAL DETERMINATION AGAINST RECOGNITION OF THE LITTLE SHELL TRIBE

On October 27, 2009, over thirty years after our initial petition, the Office of Federal Acknowledgment issued their final determination against acknowledgment of my people. Only an appeal to the Interior Board of Indian Appeals has prevented that decision from becoming effective. It could be years before the IBIA rules. Despite the fact that the Proposed Finding was in favor of recognition, that no substantive negative comments were received, and that we submitted thousands of additional pages of evidence to support our position, the OFA chose to reverse their decision. Their previous decision had taken into account historical circumstances as required by the regulations, and concluded that certain departures from precedent were justified. The Tribe was encouraged to submit additional information, not as a condition of being recognized, but merely to narrow what were viewed as the necessary departures from precedent. Imagine our surprise then, when OFA totally reversed its judgment and chose to strictly construe the requirements of the regulations so as to conclude that we failed criteria (a) recognition by outsiders during the period 1900-1935; (b) community from historical time to the present; and (c) the exercise of political authority from historic times to the present. Significantly, the finding concluded that our additional work had shown that 89% of our people trace from a historic tribe, thus meeting criterion (e) without any need to depart at all from precedent. In sum, we were told that we met the requirements, we worked in good faith to help the department, and then we were hit with a total reversal of policy. Is it any wonder that the Tribe has lost faith in the acknowledgment system?

My people have spent the past thirty years fighting for our recognition through the lengthy and burdensome administrative recognition process imposed by the Department under the Part 83 regulations. In the course of this pursuit we have been truly lucky to have the assistance of the Native American Rights Fund (NARF), a legal aid organization devoted to the protection of indigenous people's rights in the United States, pro bono. They agreed to work on our petition because, as an organization familiar with tribes and tribal rights, they had faith in Little Shell as an Indian tribe. NARF has expended over \$1 million to retain historians, genealogists, and other expert consultants to provide the very technical and arcane information that the Office of Federal Acknowledgment often requires.

The lengthy process also inflicts an immeasurable human cost, wherein the acknowledgment torch is passed from one generation to another. The task of securing professionals to assist us with our petition and the collection of documents from repositories across the United States, Canada and England was itself demanding, but it paled in comparison to the demands of providing for my people without the protection of federal recognition, without a land base. It is heartbreaking that now after nearly 30 years in the administrative process, in the politically charged atmosphere of Washington, D.C., the Department has reversed its proposed favorable finding and decided not confer federal acknowledgment. Now, we must look to Congress once again to enact legislation to confirm federal recognition of the Little Shell Band, recognition that Congress has presumed for generations was appropriate for Little Shell.

CONGRESSIONAL ACTION IS ABSOLUTELY NECESSARY

Congress has plenary power with regard to tribes in the United States. It is Congress then who has the final power and authority to recognize or terminate a relationship with a tribe, not the Department. Congress has not relinquished that authority to the Department of the Interior. The administrative regulations were adopted by the Department without benefit of legislation. As a result, Congress can and should act for the Little Shell since the administrative process cannot and has not worked for us. That is what the Little Shell people ask this body to do now through S. 546.

Congress has enacted similar legislation for other tribes which, like Little Shell, have a history of congressional efforts to reorganize the tribe. Congress enacted such legislation for tribes such as the Little Traverse Bay Band of Odawa Indians and the Little River Band – tribes, like us, whom the Department attempted to recognize in the 1930s but because of the lack of appropriations, recognition was never completed. The Department of the Interior noted this unique history, even in its Final Determination against federal acknowledgment:

Congress has plenary power over Indian affairs and, considering two historical factors, could recognize this petitioner as an Indian Tribe. First, the Department initiated action under the Indian Reorganization Act of 1934 that affected the ancestors of a significant majority of the petitioner's members. And second, Congress passed the Act of December 31, 1982 (96 Stat. 2022), conditionally allocating certain trust funds to "the Little Shell Tribe of Chippewa Indians of Montana" petitioner.

Notice of Final Determination, 74 Fed. Reg. 56861 (Nov. 3, 2009). The Department went on to note that more than \$3 million remains in trust under the allocation act and offered that "Congress could direct that they be used to purchase land for the group, as contemplated in the 1930's, should Congress choose to recognize the Little Shell petitioner." *Id.*

The existence of this judgment fund is another circumstance unique to Little Shell. As the Department noted, Congress allocated a portion of the settlement to the Little Shell Tribe. Some of these funds were distributed to our tribal members but roughly \$3 million is still held in trust by the Secretary of the Interior pending possible federal recognition of our Tribe. The existence of this fund means that money is finally appropriated and available to

purchase land for the Little Shell and the only thing that is needed is Congressional direction and permission to do so.

It is also important to note that the proposed Congressional action to confirm federal recognition of the Little Shell Tribe enjoys broad support in Montana. My people enjoy the support of all the federally recognized tribes in Montana. I'm proud to state that not one negative substantive comment was received after the Department issued their initial proposed finding in favor of recognition of my Tribe. The support of the other tribes in Montana is indicative of the merits of our recognition. Who is in a better position to perceive who is a "real tribe" in the State of Montana, the other tribes of Montana or a career bureaucrat sitting in Washington, D.C.? Our sister tribes in Montana have intimate knowledge of our culture and history that spans the many years that we have resided in the same territory as them.

We are also grateful to have the support of the State of Montana as well. Governor Schweitzer and the Montana State Legislature, by Joint Resolution, have expressed their support for our federal recognition. Hill, Cascade, Glacier and Blaine County as well as the City of Great Falls, the local governments most directly impacted by our recognition, have expressed their support of legislation to recognize the Little Shell Tribe. In fact, ***the State of Montana recently provided us with land*** from which we can provide essential governmental services -- something the federal government had promised to do throughout the twentieth century but has yet to accomplish.

Our neighbors, both Indian and non-Indian alike, have all recognized that we are a "tribe." Many of them have petitioned Washington in support of our cause over the last century. They still stand with us today. Congressional recognition of our Tribe would not stir local animosity nor would it provoke strong sentiments against our cause. It would provide a sense of relief and closure for my people and for our friends in Montana who have tirelessly supported our cause and watched our plight over the past century.

CONCLUSION

Distinguished Senators, it is to you that I make my people's final appeal. For too long we have been refugees without a homeland in our own aboriginal territory, unable to provide proper schools for our children or healthcare for our elders. Throughout this ordeal I have watched as tribal members have passed away without realizing our dream of recognition and I have seen new tribal members born without the protections that federal recognition entails. All I ask is that this body make good on the promises that have been made to the Little Shell Tribe over the past century and acknowledge your recognition of my people.

I thank you for your time and for your consideration of S. 546. I am more than happy to answer any questions from the Committee.